

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Emmitt Fraley,

Case No. 21-CV-2018 (ECT/KMM)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

B. Birkholz, Warden of Federal Prison
Camp Duluth, and Michael Carvajal,
Director of the Federal Bureau of
Prisons, in their official capacities,

Respondents.

In a letter dated September 13, 2021, the Clerk of Court instructed petitioner Emmitt Fraley that he would be required to either submit the \$5.00 filing fee for this habeas corpus matter or apply for *in forma pauperis* (“IFP”) status within 15 days, failing which this action may be dismissed without prejudice for failure to prosecute. *See* ECF No. 3. That deadline has now passed, and Mr. Fraley has not paid the filing fee for this matter or applied for IFP status. In fact, Mr. Fraley has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with the warning to Mr. Fraley from the Clerk of Court, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to

dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Date: October 13, 2021

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).